

Assembly Bill No. 1245

CHAPTER 222

An act to amend Sections 1088, 1110, 1112, 1114, 13002, and 13021 of, and to add Section 1112.1 to, the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor August 17, 2015. Filed with
Secretary of State August 17, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1245, Cooley. Unemployment insurance: electronic reporting and funds transfers.

(1) Existing law provides for unemployment compensation benefits for eligible individuals in the state who are unemployed through no fault of their own. Existing law requires an employer, as defined, to file a report of contributions, a quarterly return, a report of wages paid, and an annual reconciliation return, as specified, to the Director of Employment Development and to make contributions for unemployment insurance premiums. Existing law provides that an electronic funds transfer of contributions satisfies the report of contributions filing requirements.

This bill, beginning on January 1, 2017, would require an employer with 10 or more employees to file all reports and returns electronically and remit all contributions for unemployment insurance premiums by electronic funds transfer, except as provided. The bill, beginning on January 1, 2018, would extend the application of these electronic filing and fund transfer requirements to all employers. The bill would authorize the granting of a waiver from these requirements, as specified. The bill would impose a penalty of \$50 on those employers who fail to file a quarterly return electronically without good cause, and would, until January 1, 2019, exempt certain employers' timely nonelectronic filings from that penalty.

(2) Existing law imposes a 15% penalty on an employer who fails to timely pay the contributions and imposes a \$20 penalty for each unreported wage item.

This bill would extend those penalties to an employer, subject to the above-described electronic filing requirements, who fails to file the required reports electronically and would, on and after January 1, 2017, and until January 1, 2019, exempt certain employers from those penalties.

(3) Existing law requires employers to withhold income taxes each calendar quarter, file a withholding report, a quarterly return, a report of wages, and pay over the taxes required to be withheld.

This bill, beginning on January 1, 2017, would require an employer subject to the above-described electronic filing requirements to remit the withheld

taxes by electronic funds transfer. The bill would authorize a waiver from these requirements, as specified.

The bill would also make related conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 1088 of the Unemployment Insurance Code is amended to read:

1088. (a) (1) Each employer shall file with the director within the time required by subdivision (a) or (d) of Section 1110 for payment of employer contributions, a report of contributions, a quarterly return, and a report of wages paid to the employer's workers in the form and containing any information as the director prescribes. An electronic funds transfer of contributions pursuant to subdivision (f) of Section 1110 shall satisfy the requirement for a report of contributions. The quarterly return shall include the total amount of wages, employer contributions required under Sections 976 and 976.6, worker contributions required under Section 984, the amounts required to be withheld under Section 13020, or withheld under Section 13028, and any other information as the director shall prescribe. The report of wages shall include individual amounts required to be withheld under Section 13020 or withheld under Section 13028.

(2) (A) In order to enhance efforts to reduce tax fraud and to reduce the personal income tax reporting burden, effective January 1, 1997, the report of wages shall also include the full first name of the employee and total wages, as defined in Section 13009, paid to each employee. This paragraph shall apply to reports of wages for all periods ending on or before December 31, 1999.

(B) For all periods beginning on or after January 1, 2000, the report of wages shall also include total wages subject to personal income tax, as defined in Section 13009.5, paid to each employee.

(b) Each employer shall file with the director within the time required by subdivision (b) or (d) of Section 1110 for payment of worker contributions, a report of contributions containing the employer's business name, address, and account number, the total amount of worker contributions due, and any other information as the director shall prescribe. The director shall prescribe the form for the report of contributions. An electronic funds transfer of contributions pursuant to subdivision (f) of Section 1110 shall satisfy the requirement for a report of contributions.

(c) In addition to the report of contributions, quarterly return, and report of wages required by employers under subdivision (a), an individual who has elected coverage under subdivision (a) of Section 708 is also required to file a separate report of contributions, and quarterly return, subject to Part 2 (commencing with Section 2601).

(d) Any employer making an election under subdivision (d) of Section 1110 shall submit the report of wages described in subdivision (a), within

the time required for submitting employer contributions under subdivision (a) of Section 1110.

(e) For purposes of making a report of wages under subdivision (a), employers that are required under Section 6011 of the Internal Revenue Code and authorized regulations thereunder to file magnetic media returns, shall, within 90 days of becoming subject to this requirement, do one of the following:

(1) File any subsequent reports of wages electronically.

(2) Establish to the satisfaction of the director that there is a lack of automation, a severe economic hardship, a current exemption from submitting magnetic media or electronic information returns for federal purposes, or other good cause for not complying with this subdivision. Approved waivers shall be valid for one year or longer, at the discretion of the director.

(f) The Franchise Tax Board shall be allowed access to the information filed with the department pursuant to this section.

(g) The requirement in subdivision (a) to file a quarterly return shall begin with the first calendar quarter of the 2011 calendar year.

(h) (1) Notwithstanding subdivision (e), effective January 1, 2017, an employer with 10 or more employees shall file the report of contributions, quarterly return, and report of wages electronically.

(2) Notwithstanding subdivision (e), effective January 1, 2018, all employers shall file the report of contributions, quarterly return, and report of wages electronically.

(3) Notwithstanding paragraphs (1) and (2), an employer may request a waiver from the electronic filing requirements of this subdivision. The department may grant the waiver when the employer has established to the satisfaction of the director that there is a lack of automation, a severe economic hardship, a current exemption from filing electronically for federal purposes, or other good cause. An approved waiver shall be valid for one year or longer, at the discretion of the director.

SEC. 2. Section 1110 of the Unemployment Insurance Code is amended to read:

1110. (a) Employer contributions required under Sections 976 and 976.6, the amount of benefits received by any individual pursuant to this part that is deducted from an award or settlement made by the employer under the provisions of Section 1382, and, except as provided by subdivision (b) of this section, worker contributions required under Section 984 are due and payable on the first day of the calendar month following the close of each calendar quarter and shall become delinquent if not paid on or before the last day of that month.

(b) Worker contributions required under Section 984 are due and payable at the same time and by the same method as amounts required to be withheld under Section 13020 are paid to the department pursuant to Section 13021, regardless of the amount of accumulated unpaid liability for worker contributions.

(c) Employer contributions submitted pursuant to Section 976.5 shall be paid on or before the last working day of March of the calendar year to which the reduced contribution rate would be applicable. Any employer whose eligibility for an unemployment insurance contribution rate determination is redetermined to make that employer eligible to submit voluntary unemployment insurance contributions in accordance with Section 976.5, may submit a voluntary unemployment insurance contribution within 30 days of the date of notification of the redetermination.

(d) Except as provided in subdivision (e), any employer described in Sections 682 and 684 may elect to report and pay employer contributions required under Sections 976 and 976.6, and worker contributions required under Section 984, annually. All contributions are due and payable on the first day of January following the close of the prior calendar year and shall become delinquent if not paid on or before the last day of that month. An election under this subdivision shall be effective the first day of the calendar year in which it is approved by the department. An election under this subdivision may not be approved if the employer has an outstanding return or report delinquency on the records of the department, or an unpaid amount owed to the department, that is not the subject of a timely petition for reassessment pending before the appeals board at the time the election is filed.

(e) An employer described in Sections 682 and 684 who pays more than twenty thousand dollars (\$20,000) in wages annually, shall not be entitled to the election allowed in subdivision (d). If at any time during the year the total wages paid by an employer electing to file under subdivision (d) exceeds twenty thousand dollars (\$20,000), the election shall be terminated at the close of that calendar quarter. In addition to the report of wages due for that quarter, the employer shall file a return and pay any contributions due for that portion of the year during which the election was in effect, and shall pay contributions in accordance with subdivisions (a), (b), and (c) for the remainder of that year.

(f) Contributions due pursuant to this section may be submitted by electronic funds transfer. Contributions submitted by electronic funds transfer shall be deemed complete in accordance with paragraph (4) of subdivision (e) of Section 13021.

(g) (1) Notwithstanding subdivision (f), effective on and after January 1, 2017, an employer with 10 or more employees shall remit the contributions and withholdings by electronic funds transfer.

(2) Notwithstanding subdivision (f), effective on and after January 1, 2018, all employers shall remit the contributions and withholdings by electronic funds transfer.

(3) Notwithstanding paragraphs (1) and (2), an employer may request a waiver from the electronic funds transfer requirement of this subdivision. The department may grant the waiver when the employer has established to the satisfaction of the director that there is a lack of automation, a severe economic hardship, a current exemption from filing electronically for federal

purposes, or other good cause. An approved waiver shall be valid for one year or longer, at the discretion of the director.

(h) For purposes of this section, “electronic funds transfer” shall have the same meaning as in Section 13021.5.

SEC. 3. Section 1112 of the Unemployment Insurance Code is amended to read:

1112. (a) Any employer who without good cause fails to pay any contributions required of him or her or of his or her workers, except amounts assessed under Article 8 (commencing with Section 1126), within the time required shall pay a penalty of 15 percent of the amount of those contributions.

(b) Any employer required to remit payments electronically who without good cause remits those amounts by means other than electronic shall pay a penalty of 15 percent of the amount of those contributions.

(c) Notwithstanding subdivision (b), on and after January 1, 2017, and before January 1, 2019, an employer required to remit payments electronically, excluding employers previously required to remit payments by electronic funds transfer under Section 13021, who remits those amounts within the time required by means that are not electronic shall not be subject to the penalty described in subdivision (b).

(d) The changes made to this section by Chapter 28 of the Statutes of 2014 shall apply on and after July 1, 2014.

SEC. 4. Section 1112.1 is added to the Unemployment Insurance Code, to read:

1112.1. (a) An employer who is required to file a quarterly return electronically pursuant to Section 1088 and without good cause fails to file a quarterly return electronically shall pay a penalty of fifty dollars (\$50), in addition to any other penalties imposed by this code.

(b) Notwithstanding subdivision (a), on and after January 1, 2017, and before January 1, 2019, an employer required to file a quarterly return electronically who files a quarterly return within the time required by means that are not electronic shall not be subject to the penalty described in subdivision (a).

SEC. 5. Section 1114 of the Unemployment Insurance Code is amended to read:

1114. (a) Any employer who, without good cause, fails to file within 15 days after service by the director of notice pursuant to Section 1206 of a specific written demand therefor, a report of wages of each of his or her workers required by this division, shall pay in addition to other amounts required, for each unreported wage item a penalty of twenty dollars (\$20).

(b) Any employer required by this division to file a report of wages of each of his or her workers on magnetic media or other electronic means as prescribed by subdivision (e) or (h) of Section 1088, who, without good cause, instead files a report of wages by means other than electronic, shall pay, in addition to other amounts required, for each wage item a penalty of twenty dollars (\$20).

(c) Notwithstanding subdivision (b), on and after January 1, 2017, and before January 1, 2019, an employer required to file a report of wages, excluding employers previously required to file a report of wages under subdivision (e) of Section 1088, who files a report of wages within the time required by means that are not electronic shall not be subject to the penalty described in subdivision (b).

(d) The changes made to this section by Chapter 28 of the Statutes of 2014 shall apply on and after July 1, 2014.

SEC. 6. Section 13002 of the Unemployment Insurance Code is amended to read:

13002. The following provisions of this code shall apply to any amount required to be deducted, reported, and paid to the department under this division:

(a) Sections 301, 305, 306, 310, 311, 312, 317, and 318, relating to general administrative powers of the department.

(b) Sections 403 to 413, inclusive, Section 1336, and Chapter 8 (commencing with Section 1951) of Part 1 of Division 1, relating to appeals and hearing procedures.

(c) Sections 1110.6, 1111, 1111.5, 1112, 1112.1, 1113, 1113.1, 1114, 1115, 1116, and 1117, relating to the making of returns or the payment of reported contributions.

(d) Article 8 (commencing with Section 1126) of Chapter 4 of Part 1 of Division 1, relating to assessments.

(e) Article 9 (commencing with Section 1176), except Section 1176, of Chapter 4 of Part 1 of Division 1, relating to refunds and overpayments.

(f) Article 10 (commencing with Section 1206) of Chapter 4 of Part 1 of Division 1, relating to notice.

(g) Article 11 (commencing with Section 1221) of Chapter 4 of Part 1 of Division 1, relating to administrative appellate review.

(h) Article 12 (commencing with Section 1241) of Chapter 4 of Part 1 of Division 1, relating to judicial review.

(i) Chapter 7 (commencing with Section 1701) of Part 1 of Division 1, relating to collections.

(j) Chapter 10 (commencing with Section 2101) of Part 1 of Division 1, relating to violations.

SEC. 7. Section 13021 of the Unemployment Insurance Code is amended to read:

13021. (a) Every employer required to withhold any tax under Section 13020 shall for each calendar quarter, whether or not wages or payments are paid in the quarter, file a withholding report, a quarterly return, as described in subdivision (a) of Section 1088, and a report of wages in a form prescribed by the department, and pay over the taxes so required to be withheld. The report of wages shall include individual amounts required to be withheld under Section 13020 or withheld under Section 13028. Except as provided in subdivisions (c) and (d), the employer shall file a withholding report, a quarterly return, as described in subdivision (a) of Section 1088, and a report of wages, and remit the total amount of income taxes withheld

during the calendar quarter on or before the last day of the month following the close of the calendar quarter.

(b) Every employer electing to file a single annual return under subdivision (d) of Section 1110 shall report and pay any taxes withheld under Section 13020 on an annual basis within the time specified in subdivision (d) of Section 1110.

(c) (1) Effective January 1, 1995, whenever an employer is required, for federal income tax purposes, to remit the total amount of withheld federal income tax in accordance with Section 6302 of the Internal Revenue Code and regulations thereunder, and the accumulated amount of state income tax withheld is more than five hundred dollars (\$500), the employer shall remit the total amount of income tax withheld for state income tax purposes within the number of business days as specified for withheld federal income taxes by Section 6302 of the Internal Revenue Code, and regulations thereunder.

(2) Effective January 1, 1996, the five hundred dollar (\$500) amount referred to in paragraph (1) shall be adjusted annually as follows, based on the annual average rate of interest earned on the Pooled Money Investment Account as of June 30 in the prior fiscal year:

Average Rate of Interest

Greater than or equal to 9 percent:	\$ 75
Less than 9 percent, but greater than or equal to 7 percent:	250
Less than 7 percent, but greater than or equal to 4 percent:	400
Less than 4 percent:	500

(d) (1) Notwithstanding subdivisions (a) and (c), for calendar years beginning on and after January 1, 1995, if in the 12-month period ending June 30 of the prior year, the cumulative average payment made pursuant to this division or Section 1110 for any deposit periods, as described under Section 6302 of the Internal Revenue Code and regulations thereunder, was twenty thousand dollars (\$20,000) or more, the employer shall remit the total amount of income tax withheld within the number of business days as specified for filing federal income taxes by Section 6302 of the Internal Revenue Code, relating to mode or time of collection, and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the business day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the business day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required

by this paragraph to make payments by electronic funds transfer of these requirements.

(2) Effective January 1, 2017, paragraph (1) shall not apply to an employer subject to the electronic filing requirements of Section 1088. Effective January 1, 2017, an employer subject to the electronic filing requirements of Section 1088 shall remit the total amount of income tax withheld within the number of business days specified in Section 6302 of the Internal Revenue Code and the regulations adopted thereunder for filing federal income taxes. Payment shall be deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the business day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the business day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs.

(3) Notwithstanding paragraphs (1) and (2), effective January 1, 1995, electronic funds transfer payments that are subject to the one-day deposit rule, as described by Section 6302 of the Internal Revenue Code and regulations thereunder, shall be deemed timely if the payment settles to the state's demand account within three business days after the date the employer meets the threshold for the one-day deposit rule.

(4) Any taxpayer required to remit payments pursuant to paragraphs (1) and (2) may request from the department a waiver of those requirements. The department may grant a waiver only if it determines that the particular amount paid in excess of twenty thousand dollars (\$20,000), as stated in paragraph (1) was the result of an unprecedented occurrence for that employer, and was not representative of the employer's cumulative average payment in prior years.

(5) A state agency required to remit payments pursuant to paragraphs (1) and (2) may request a waiver of those requirements from the department. The department may grant a waiver if it determines that there will not be a negative impact on the interest earnings of the General Fund. If there is a negative impact to the General Fund, the department may grant a waiver if the requesting state agency follows procedures designated by the department to mitigate the impact to the General Fund.

(e) An employer not required to make payment pursuant to subdivision (d) may elect to make payment by electronic funds transfer in accordance with Section 13021.5 under the following conditions:

(1) The election shall be made in a form, and shall contain information, as prescribed by the director, and shall be subject to approval by the department.

(2) If approved, the election shall be effective on the date specified in the notification to the employer of approval.

(3) The election shall be operative from the date specified in the notification of approval, and shall continue in effect until terminated by the employer or the department.

(4) Funds remitted by electronic funds transfer pursuant to this subdivision shall be deemed complete in accordance with subdivision (d) or as deemed appropriate by the director to encourage use of this payment method.

(f) Notwithstanding Section 1112, interest and penalties shall not be assessed against an employer that remits at least 95 percent of the amount required by subdivision (c) or (d) if the failure to remit the full amount is not willful and any remaining amount due is paid with the next payment. The director may allow any employer to submit the amounts due from multiple locations upon a showing that those submissions are necessary to comply with subdivision (c) or (d).

(g) The department may, if it believes that action is necessary, require any employer to make the report or return required by this section and pay to it the tax deducted and withheld at any time, or from time to time but no less frequently than provided for in subdivision (a).

(h) An employer required to withhold any tax and that is not required to make payment under subdivision (c) shall remit the total amount of income tax withheld during each month of each calendar quarter, on or before the 15th day of the subsequent month if the income tax withheld for any of the three months or, cumulatively for two or more months, is three hundred fifty dollars (\$350) or more.

(i) For purposes of subdivisions (a), (c), and (h), payment that is not required to be made by electronic funds transfer is deemed complete when it is placed in a properly addressed envelope, bearing the correct postage, and it is deposited in the United States mail.

(j) (1) In addition to the withholding report, quarterly return, and report of wages described in subdivision (a), each employer shall file with the director an annual reconciliation return showing the amount required to be withheld under Section 13020, and any other information the director shall prescribe. This annual reconciliation return shall be due on the first day of January following the close of the prior calendar year and shall become delinquent if not filed on or before the last day of that month.

(2) The requirement to file the annual reconciliation return for the prior calendar year under this subdivision shall not apply to the 2012 calendar year and thereafter.

(k) The requirement in subdivision (a) to file a quarterly return shall begin with the first calendar quarter of the 2011 calendar year.

(l) The changes made to this section by Chapter 783 of the Statutes of 2012 shall apply on and after January 1, 2013.